

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Erik Grubin	Team: Team # 4	CCRB Case #: 200304038	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/23/2003 9:45 PM	Location of Incident: 90 Avenue D, Manhattan	Precinct: 09	18 Mo. SOL 10/23/2004	EO SOL 10/23/2004	
Date/Time CV Reported Mon, 06/02/2003 11:50 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/02/2003 11:50 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Timothy Skretch	02991	926130	PSA 4
2. POM Robert Leahy	10206	914245	PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Villanueva	31281	920943	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.POM Timothy Skretch	Abuse: PO Timothy Skretch stopped and questioned § 87(2)(b)	
B.POM Timothy Skretch	Abuse: PO Timothy Skretch frisked and searched § 87(2)(b)	
C.POM Timothy Skretch	Abuse: PO Timothy Skretch searched the car in which § 87(2)(b) was an occupant.	
D.POM Robert Leahy	Abuse: PO Robert Leahy searched § 87(2)(b)	
E.POM Robert Leahy	Abuse: PO Robert Leahy searched the car in which § 87(2)(b) was an occupant.	

## Synopsis

On April 23, 2003, at 9:45 PM, across from 90 Avenue D in Manhattan, PO Timothy Skretch, PO John Villaneuva and PO Robert Leahy of the Housing PSA4 anti-crime unit stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants (allegation A). PO Skretch allegedly frisked and searched § 87(2)(b) as well as the vehicle prior to § 87(2)(b)'s arrest (allegations B and C). PO Leahy allegedly searched § 87(2)(b) and the vehicle (allegations D and E). § 87(2)(b) violated the § 87(2)(b) [REDACTED] officers transported § 87(2)(b) to the Housing PSA4 stationhouse without further incident. § 87(2)(b) was not arrested and was not issued a summons.

§ 87(2)(b) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on July 8, 2003 (See enclosure 5B). Minutes prior to the incident, the complainant observed his friend's black, two-door Honda Civic, parked at the curb in front of a fire hydrant. His friend, § 87(2)(b) was seated in the passenger seat looking in the glove compartment. § 87(2)(b) opened the driver's door and sat in the driver's seat. After closing the driver's door, the two talked. The engine of the car was turned off and the keys were not inside the ignition. Within minutes, an officer later identified as PO Timothy Skretch, tapped on the driver's door window and § 87(2)(b) opened the window. The officer requested § 87(2)(b)'s driver's license and registration. § 87(2)(b) responded saying that he was not driving the vehicle, but PO Skretch ordered § 87(2)(b) out of the vehicle. § 87(2)(b) complied and the officer ordered § 87(2)(b) to walk towards the back of the vehicle and place his hands against the car. § 87(2)(b) complied and the officer subsequently searched § 87(2)(b) placing his hands inside the pockets of § 87(2)(b)'s shorts. During the one-minute search, the officer removed § 87(2)(b)'s wallet. While he was searched, § 87(2)(b) observed that § 87(2)(b) had exited the vehicle and stood beside the passenger side of the vehicle. He did not observe any officer frisk or search § 87(2)(b). After searching § 87(2)(b) PO Skretch, using a flashlight searched the driver's seat of the vehicle, underneath the seat, and then pulled the driver's seat forward to search the back seat. The search of the vehicle revealed no contraband or weapons and PO Skretch then handed § 87(2)(b)'s wallet to another plainclothes officer, identified as PO Villaneuva. PO Villaneuva entered an unmarked police van, which was parked behind the vehicle and after two-minutes the officer returned to the Honda Civic and spoke with PO Skretch. § 87(2)(b) could not hear the officers' dialogue but after the officers spoke, PO Skretch handcuffed § 87(2)(b) and placed him in the van. PO Skretch told § 87(2)(b) that he was arrested for driving with a suspended license. The officers transported § 87(2)(b) to the 9<sup>th</sup> Precinct stationhouse for processing without further incident. § 87(2)(b) claimed that after his release from police custody on April § 87(2)(b) the officers did not return his driver's license. § 87(2)(b) visited the stationhouse on a later date, and PO Skretch told him that the license was mailed to him.

## Results of Investigation

### Overview

On the incident date, PSA4 anti-crime officers stopped § 87(2)(b)'s vehicle because the vehicle was double-parked in front of a fire hydrant and § 87(2)(b) sat in the driver's seat. A subsequent warrants check of § 87(2)(b)'s driver's license revealed that the license was revoked. The officers then arrested § 87(2)(b) for § 87(2)(b) [REDACTED] During the stop, PO Skretch searched the vehicle and also conducted a search incident to § 87(2)(b)'s arrest.

### Victims

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on July 8, 2003 (See enclosure 6B). According to § 87(2)(b) after he and § 87(2)(b) spoke for several minutes, the officers approached his vehicle. While § 87(2)(b) sat in the driver's seat, the vehicle's engine was turned off, but added that the keys were inside the ignition. As a plainclothes officer identified as PO Skretch approached the driver's side and spoke with § 87(2)(b) a plainclothes officer, identified as PO Robert Leahy approached the open passenger door and asked § 87(2)(b) what the two were doing. PO Leahy then requested § 87(2)(b)'s identification. § 87(2)(b) retrieved his driver's license and exited the vehicle on his own. He submitted the license to the officer and the officer told him that the area was "known for drugs." PO Leahy instructed § 87(2)(b) to place his hands against the vehicle and the officer subsequently searched § 87(2)(b) by placing his hands inside the pockets of § 87(2)(b)'s pants and jacket. The search occurred near the passenger door, but the search revealed no contraband or weapons. He observed that PO Skretch searched § 87(2)(b) and described § 87(2)(b) as "upset and having an attitude towards the officer," but he could not elaborate. § 87(2)(b) attempted to calm his friend by saying, "Relax, let the officer do his job," but § 87(2)(b) continued to argue with PO Skretch. § 87(2)(b) did not observe PO Skretch search the vehicle. As PO Leahy continued to search him, a friend, identified as § 87(2)(b) exited the bodega and asked about the situation, but PO Skretch ordered § 87(2)(b) to step back and he complied. After PO Leahy searched § 87(2)(b) the officer searched the passenger seat, underneath the seat, the dashboard, and pulled the passenger seat forward to search the backseat. PO Leahy also opened up a "fanny-pack" located on the front console of the car. PO Leahy then went to the officers' unmarked black van parked behind the vehicle. After several minutes, PO Leahy returned and gave § 87(2)(b) his driver's license. At this point, PO Skretch handcuffed § 87(2)(b) and placed him in the van. The officers left the scene without further incident. § 87(2)(b) added that a friend, § 87(2)(b) observed the incident.

### Witnesses

§ 87(2)(b) and § 87(2)(b)

When contacted via telephone, § 87(2)(b) and § 87(2)(b) stated that they did not observe this incident (See tapes #200304038, volumes 5 and 9).

### Officers

On the incident date, PO Skretch, PO Villaneuva and PO Leahy were assigned to duty in plainclothes to the Housing PSA4 anti-crime team. PO Skretch was identified by his signature on the arrest paperwork. PO Villaneuva and PO Leahy were identified by their assignments indicated in the Housing PSA4 roll call. In their CCRB statements, the three officers confirmed their presence during the incident. Additionally, the physical descriptions of the officers matched the physical descriptions given by the two victims.

### **PO Timothy Skretch**

#### On Line Booking System Arrest Report (See enclosure 11B)

The report indicates that on the incident date § 87(2)(b) was charged with § 87(2)(b)

§ 87(2)(b) The report's narrative states '§ 87(2)(a) 160.50

PO Skretch was interviewed at the CCRB on February 27, 2004 (See enclosure 7C). PO Skretch's prepared memo book indicates that "2145-one under f/o 90 Avenue D. Transport one male to PSA4. 2215-arrest number confirmed. 2230-prints confirmed. 0005-ADA interview."

At the incident time, PO Skretch observed § 87(2)(b)'s vehicle double-parked at a fire hydrant at the corner of Avenue D and East 7<sup>th</sup> Street. The vehicle's headlights and taillights were on and the engine was turned on. The officers activated the police van's turret lights and parked behind the vehicle. The officers exited the van and PO Skretch and PO Villanueva approached the driver's side as PO Leahy approached the passenger's side. One occupant, identified as § 87(2)(b) sat in the driver's seat with the keys in the ignition. The second occupant, identified as § 87(2)(b) sat in the passenger seat. Through the partially open driver's door window, PO Skretch told § 87(2)(b) that he had observed the vehicle double-parked for several minutes and then requested § 87(2)(b)'s driver's license, registration and insurance. PO Skretch also requested that § 87(2)(b) roll down the window. The officer made several requests, but § 87(2)(b) refused to comply saying, "Who the fuck are you?" At some point, § 87(2)(b) reached over and played with the gear-shift. After 30 seconds to one minute, § 87(2)(b) exited the vehicle on his own and PO Villanueva escorted § 87(2)(b) towards the back of the vehicle. PO Skretch placed his hand under the driver's seat and on the seat searching for a couple of seconds for a weapon. According to the officer, § 87(2)(b) seemed like he had something to hide. He didn't want to open the door and seemed nervous." The search revealed no weapons. PO Skretch approached § 87(2)(b) and requested his driver's license and § 87(2)(b) complied. As PO Villanueva remained with § 87(2)(b) at the back of the vehicle, PO Skretch went to the van and ran warrants/DMV checks on the license and the vehicle. PO Skretch observed that § 87(2)(b) was standing beside PO Leahy on the passenger's side. He did not hear any conversation between the two. The checks revealed that § 87(2)(b) had a revoked license because of six suspensions and that § 87(2)(b) owned the vehicle. PO Skretch returned to the vehicle and told § 87(2)(b) that he was under arrest and explained the results of the checks. § 87(2)(b) protested saying, "It can't be, it's not revoked. I wasn't driving." PO Skretch explained to § 87(2)(b) that under NYS Law, "if the ignition is on, the person in the driver's seat is technically driving." PO Skretch handcuffed § 87(2)(b). § 87(2)(b) conducted a search incident to arrest and escorted him to the van. § 87(2)(b) cursed which resulted in a crowd of five to six to gather at the sidewalk. § 87(2)(b) was also charged with disorderly conduct. PO Skretch did not speak with § 87(2)(b) or physically touch him. PO Skretch did not observe any officer frisk or search § 87(2)(b) and did not observe his two partners frisk or search § 87(2)(b). Other than his brief search of the driver's seat, no officer searched the vehicle. PO Skretch denied frisking or searching § 87(2)(b) prior to his arrest. At the PSA4 stationhouse, PO Skretch told § 87(2)(b) that his driver's license would be sent to the DMV and requested that he contact the DMV.

### **PO Robert Leahy**

PO Leahy was interviewed at the CCRB on February 27, 2004 (See enclosure 8B). PO Leahy did not prepare any memo book entries regarding this incident. PO Leahy's account is similar to PO Skretch's except for the following differences: PO Leahy did not recall whether the vehicle's engine was turned on or whether the keys were in the ignition. PO Leahy did not recall whether he spoke to § 87(2)(b). According to PO Leahy, at some point, § 87(2)(b) exited the vehicle, but the officer did not recall if § 87(2)(b) left the vehicle on his own. PO Leahy did not recall the role of PO Villanueva. During the entire incident, PO Leahy stood on the passenger's side and did not recall whether his partners approached the passenger's side. PO Leahy did not speak with § 87(2)(b) during the incident. § 87(2)(b) was searched after his arrest, but PO Leahy did not recall which officer conducted the search. PO Leahy did not recall whether any officer, including himself, searched the vehicle or frisked and searched § 87(2)(b) prior to his arrest. He did not recall whether any officer, including himself, frisked or searched § 87(2)(b) during the incident. The vehicle was released to § 87(2)(b) at the scene, but PO Leahy did not recall whether § 87(2)(b) was questioned during the incident or whether identification was requested from § 87(2)(b).

## **PO John Villanueva**

PO Villanueva was interviewed at the CCRB on March 9, 2004 (See enclosure 9C). PO Villanueva's memo book entry indicates that at "2145-one under with PO Skretch f/o 90 Avenue D. § 87(2)(b) At 2200-10/84 at PSA4."

§ 87(2)(g)

PO Villanueva also requested that § 87(2)(b) roll down the driver's door window and submit his driver's license and registration. After the officer's request, § 87(2)(b) reached towards the emergency brake and PO Villanueva then ordered § 87(2)(b) to shut off the engine and step out of the vehicle. § 87(2)(b) complied and PO Skretch reached inside the vehicle towards the front seat area and searched the vehicle. The one-minute search revealed no weapons or contraband. As PO Villanueva stood at the back of the vehicle, he observed that § 87(2)(b) was out of the vehicle standing on the passenger's side. PO Villanueva did not frisk and search § 87(2)(b) and did not observe PO Leahy frisk or search § 87(2)(b). He observed that PO Skretch arrested § 87(2)(b) and then conducted a search incident to arrest. PO Villanueva and PO Skretch did not approach the passenger side during the incident. PO Villanueva did not search the vehicle and did not observe PO Leahy search the vehicle. No officer frisked or searched § 87(2)(b) prior to his arrest. At some point, the officers obtained § 87(2)(b)'s name, but PO Villanueva did not recall which officer obtained the name. He did not recall whether the officers questioned § 87(2)(b) but the vehicle was released to § 87(2)(b) as the officers transported § 87(2)(b) to the PSA4 stationhouse without further incident.

## **Department of Motor Vehicle (DMV) Report (See enclosure 13A)**

The report indicates that § 87(2)(b)'s license was suspended six times, including four suspensions on three dates. The last suspension occurred on March 26, 2003, one month prior to the incident date.

## **Contact with the Manhattan County District Attorney's Office**

According to the Manhattan D.A.'s office, § 87(2)(b)'s criminal case was dismissed.

## **Conclusions and Recommendations**

**ALLEGATION (A) ABUSE OF AUTHORITY: PO TIMOTHY SKRETCH STOPPED AND QUESTIONED § 87(2)(b) (NYC POLICE PATROL GUIDE 212-11)**

**ALLEGATION (B) ABUSE OF AUTHORITY: PO TIMOTHY SKRETCH FRISKED AND SEARCHED § 87(2)(b) (NYC POLICE PATROL GUIDE 212-11)**

**ALLEGATION (C) ABUSE OF AUTHORITY: PO TIMOTHY SKRETCH SEARCHED THE CAR IN WHICH § 87(2)(b) WAS AN OCCUPANT. (NYC POLICE PATROL GUIDE 212-11)**

**ALLEGATION (D) ABUSE OF AUTHORITY: PO ROBERT LEAHY SEARCHED § 87(2)(b) (NYC POLICE PATROL GUIDE 212-11)**

**ALLEGATION (E) ABUSE OF AUTHORITY: PO ROBERT LEAHY SEARCHED THE CAR IN WHICH § 87(2)(b) WAS AN OCCUPANT. (NYC POLICE PATROL GUIDE 212-11)**

That PO Skretch, PO Villanueva and PO Leahy stopped § 87(2)(b)'s vehicle and subsequently arrested § 87(2)(b) for a revoked license is not in dispute. That the vehicle was illegally parked is also not in dispute as both victims readily admitted to the illegal park. § 87(2)(g)

§ 87(2)(g)

It should be noted that § 87(2)(b) claimed that PO Skretch did not return his driver's license, an act that is not in dispute. The officer admitted to confiscating the license and told the complainant that the license was sent to the Department of Motor Vehicles (DMV). § 87(2)(g)

The two victims provided similar accounts regarding the events that transpired during the incident.

§ 87(2)(g)

§ 87(2)(b) claimed that the keys were not inside the ignition when the officers stopped the vehicle, but § 87(2)(b) stated otherwise. § 87(2)(g)

§ 87(2)(g)

PO Skretch readily admitted to searching the vehicle's driver's seat and searching § 87(2)(b) after the arrest. PO Villaneuva corroborated PO Skretch's statement. § 87(2)(g)

§ 87(2)(g)

Regarding allegation (A), that the vehicle was illegally parked is not in dispute and therefore, the subject officers, observed a violation of *Vehicle Traffic Law (VTL) Article 32, Section 1202*, regarding stopping, standing, or parking prohibited in specified places. According to *VTL 1202, 3(b)*, "*No person shall stop, stand or park a vehicle within fifteen feet of a fire hydrant except when such vehicle is attended by a licensed operator who is seated in the front seat and can immediately move such a vehicle in case of emergency*" (See enclosure 1B). § 87(2)(b) gave the officers his driver's license and a DMV search was conducted. The search revealed that § 87(2)(b)'s license was revoked and the complainant's license was suspended six times on four different dates. Although § 87(2)(b) claimed that he was not operating the vehicle during the incident time, the VTL definition of a driver is "*every person who operates or drives or is in actual physical control of a vehicle*" (See enclosure 1C). § 87(2)(g)

§ 87(2)(b) claimed that PO Leahy questioned him during the incident and requested his driver's license. PO Leahy and PO Villaneuva did not recall whether they questioned § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) s claim that PO Skretch searched him prior to his arrest is corroborated by § 87(2)(g)

§ 87(2)(g)

Specifically regarding allegations (C) and (E), PO Skretch admitted to searching the vehicle’s driver seat and underneath the seat, § 87(2)(g)

According to *Kamins NYS Search and Seizure (Page 453)*, in *People v. Mundo*, the Court of Appeals, “permits the officer to articulate an actual and specific danger based solely upon the furtive conduct of occupants in a car. Thus, it is no longer necessary that the officer testify that there was a substantial likelihood of a weapon in the car. In addition, *Mundo* permits the search to be conducted in an “area within the vehicle where the furtive movements had been seen” (See enclosure 2A). § 87(2)(g)

§ 87(2)(b) claimed that PO Leahy not only searched the backseat, but also searched his fanny-pack (handbag) laying on the vehicle’s front console, an act that would also constitute misconduct. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: